



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0202; FRL-10873-01-R9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) from internal combustion engines. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0202 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	1160	Internal Combustion Engines	01/23/23	03/03/23

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, the EPA determined that the submittal for MDAQMD Rule 1160 met the completeness criteria on March 17, 2023.

B. Are there other versions of this rule?

On September 10, 2021 (86 FR 50643), we took final action on a limited approval and limited disapproval of an earlier version of Rule 1160. This limited approval final action approved this earlier version of Rule 1160 into the SIP, including those rule provisions identified as deficient. In response to our limited disapproval final action, the MDAQMD adopted revisions to the SIP-approved version on January 23, 2023 and CARB submitted them to us on March 3, 2023. In its submittal letter, CARB requested that, upon approval of the revised version of Rule 1160, the EPA remove the old version of this rule from the SIP. If we take final action to approve the January 23, 2023 version of Rule 1160, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revision?

Emissions of NO_x and VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x and VOC emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement reasonably available control technology (RACT) for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_x. Rule 1160 regulates NO_x emissions from major sources of NO_x and has been submitted by CARB and the air district to implement RACT for these sources. The revised version of Rule 1160 was submitted to address the deficiencies identified in our September 10, 2021 limited disapproval final action of the previous version of Rule 1160, and to ensure that the air district implements RACT level controls for all major stationary sources of NO_x.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of NO_x and VOCs in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS (40 CFR 81.305). Therefore, MDAQMD must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “Control of Volatile Organic Emissions from Solvent Metal Cleaning,” EPA-450/2-77-022, November 1977.
4. “NO_x Emissions from Stationary Reciprocating Internal Combustion Engines,” EPA-453/R-93-032, July 1993.
5. “Stationary Spark-Ignited Internal Combustion Engines,” CARB, November 2001.

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The revised version of Rule 1160 removed the alternative compliance option that the EPA identified as deficient in our September 10, 2021

final action. As a result, covered engines in the District no longer have the option to generate an alternative compliance plan in place of complying with the limits in the rule. However, the rule does include a specialized provision that governs five units that previously complied with the rule via an alternative compliance plan. The rule requires five specific internal combustion engines located at the Pacific Gas & Electric Facility Hinkley Compressor Station in Hinkley, California to operate, in aggregate, no greater than 2,600 engine hours per calendar year. Once operations of these engines exceed this limit, the engines will be subject to the NO_x emission limits of the rule. This represents less than 6% of the total capacity of these engines. Given the costs associated with retrofitting these low-use engines, which the facility needs to keep online for occasional peaking capacity, the EPA concludes that additional controls for these units are not reasonably available. The EPA's reasoning is explained in greater detail in the technical support document (TSD) located in the docket of this rulemaking.

The revised version of Rule 1160 also adds testing and compliance requirements for regulated internal combustion engines without emission control equipment. The lack of compliance requirements for such units was identified as a deficiency in the EPA's prior limited disapproval of Rule 1160. As described in greater detail in our TSD, the EPA concludes that these added compliance requirements cure the previously identified deficiency. The EPA's TSD has more information about this rule.

C. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MDAQMD Rule 1160, Internal Combustion Engines, amended on January 23, 2023 which regulates NO_x and VOC emissions from internal combustion engines as discussed in section II of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an

evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action.

Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2023.

Kerry Drake,

Acting Regional Administrator,

Region IX.

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